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INITIATIVE COORDINATOR  
ATTORNEY GENERAL'S OFFICE

February 22, 2006

EXPRESS MAIL  
VIA U.S. MAIL

Patricia Galvan, Initiative Coordinator  
Post Office Box 944255  
Sacramento, Ca., 94244-2550

Re: Request Title and Summary – Initiative Statutory Amendment  
Your File No. SA2006RF0023

Dear Ms. Galvan:

The measure contained an error in SECTION 1: It now reads:

SECTION 1. This measure shall be known as “Homeowners’ Bill of Rights Act of 2006.”

We have enclosed the revised measure. Also, we recommend the measure’s title to be “Homeowners’ Bill of Rights Act of 2006.”

Send all inquiries to:

**PINNOCK & WAKEFIELD, A.P.C.**

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\_\_\_\_\_  
Theodore A. Pinnock  
Proponent

\_\_\_\_\_  
Jennifer Watson  
Proponent

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. This measure shall be known as “ Homeowners’ Bill of Rights Act of 2006.”

SECTION 2. The People find and declare, as follows:

- (a) The California system for the administration of civil justice is one of the fairest in the world, but certain procedures and standards should be amended to ensure fairness to all parties.
- (b) The prompt and fair resolution of construction defect claims is in the interest of homeowner(s) and the builders of homes, and is vital to the state's continuing growth and vitality. The prior procedures and standards for resolution of claims before the enactment of SB 800 shall be restored.
- (c) It is the intent of the People that this act improve the procedures for the administration of civil justice, including standards and procedures for early disposition of construction defects. The State has a legitimate interest in ensuring that the residential market is free from construction defects so property values will grow. The economy of the State will prosper when new home buyers are protected from construction defects.
- (d) Despite the availability of high quality housing within all communities throughout the United States, a need exists, nevertheless, to protect home buyers against the potentially ruinous effects of defective new home construction/home improvement (remodeling) caused by negligent or unscrupulous building and/or business practices.
- (e) Each year, hundreds of thousands of unsuspecting homeowners realize their new homes are deficient. These problems include, but are not limited to: faulty design, code violations, cracked foundations, moisture problems that lead to toxic molds, substandard workmanship, and generally unsafe structures. Multitudes of homeowners have suffered great losses: their life's savings, their physical and emotional health, and home value depreciation.
- (f) Homeowners are unprotected because local governments and their representatives are immune from lawsuits concerning defective construction. Local government is legally protected by the doctrine of "sovereign immunity". Lawsuits are routinely "thrown out of court". Today, the building industry is one of the most unregulated industries in the nation.
- (g) There are enormous dangers and pitfalls of confidentiality settlement agreements in construction defect litigation.
- (h) Tax-dollar-funded government agencies designed to protect the home buying consumer are rendered useless by confidentiality agreements.
- (i) Time and again, homeowner(s) are victimized by industries and individuals who host a hidden history of unscrupulous business practices, a history often agreed upon by both parties in a legal dispute which further buries and makes such information unobtainable to the public sector, and
- (j) Most victims do not desire to settle with confidentiality, it is often forced upon them after years of stressful litigation and a desire for closure. This results in further injuries to a trusting and ill-informed home-buying public.

SECTION 3. DEFINITIONS:

- (a) "homeowner" includes the individual owners of single-family homes, individual unit owners of attached dwellings and, in the case of a common interest development, any association as defined in subdivision (a) of Section 1351.
- (b) "builder" means a builder, developer, or original seller and applies to the sale of new

residential units on or after January 1, 2007.

- (c) this title applies to any person, company, contractor, builder, developer, architect, engineer, designer, or other individual or entity who develops, improves, owns, operates, or manages any residential building.
- (d) The Black's Law Dictionary 7th Edition (Black's Law Dictionary) shall be used to define all other words in this measure. If a word used in this measure is not defined by Black's Law Dictionary 7th Edition (Black's Law Dictionary) then Merriam-Webster Collegiate® Dictionary, Eleventh Edition shall be used to define all other words in this measure.

SECTION 4. Sections 43.99, 895, 896, 900 to 938 and 941 to 945.5 to the Civil Code are repealed.

SECTION 5. Homeowners' bill of Rights; A new Section 895 shall be added to the Civil Code. It shall read:

- (a) When homeowner(s) buy a new home or contract for additions and/or remodeling of an existing home: Homeowner(s) have the right to safe and sound, quality construction.
- (b) Homeowner(s) have the right to expect that their new home and/or any home improvements are built in compliance with all existing local, state, and federal building codes and ordinances.
- (c) Homeowner(s) have the right to expect that only quality, performance-proven building products are used in their homes and that all such products are installed in accordance with manufacturers' specifications.
- (d) Homeowner(s) have the right to expect that the architect's and engineer's designs are completely and accurately followed.
- (e) Homeowner(s) have the right to expect that the home will not leak or breed toxic mold(s), is structurally sound, and that all mechanical systems and structural components will perform properly.
- (f) Homeowner(s) have the right to receive, in a timely manner prior to signing a sales contract and/or closing documents, complete information regarding their purchase contracts, warranties, disclosures of agencies, and any and all relationships and/or partnerships their real estate broker and/or builder may have with all agencies involved with the home buying process. This includes, but is not limited to: home inspectors, lenders, title companies, builders'/subcontractors' insurance carriers, products' manufacturers, realtors, and home warranty companies.
- (g) Homeowner(s) have the right to access records, public and private, regarding performance and complaints pertaining to their builder, subcontractors, home warranty companies, lenders, manufacturers, realtors, title companies, insurance carriers, and any other entity associated with the home building/home buying process.
- (h) Homeowner(s) have the right to full disclosures in regard to new housing.
- (i) Homeowner(s) have the right to a trial conducted by their peers, rather than to be forced into contractual binding arbitration.
- (j) Homeowner(s) have the right to peace of mind concerning the safety of their family.
- (k) The Homeowners' bill of Rights shall allow injured/distressed homeowners to disclose fraudulent business ethics, code violations, and other substandard building practices to federal, state, and local agencies designed to protect the consumer. All legal judgments and/or out-of-court settlements shall be made obtainable to the public sector. This measure shall include remodeling/home improvement contractors.
- (l) New Home Disclosure. Regardless of local government inspections, finals, and/or certificates of occupancy, builders/developers must disclose any and all known problems in new home construction. Laws that govern disclosure on resale homes

shall be applied to new homes. Any and all code violations of state and/or municipal building regulations must be disclosed. Within the same subdivision, builders/sellers of new construction must disclose to the home buyer any past and/or pending litigation for defects.

- (m) The Right to Wholeness. Reimbursements of attorney fees and expert costs involving both in-court and out-of-court settlements. Such reimbursements will include emotional distress awards for homeowners who have had to suffer the mental anguish of living in substandard housing and/or illness(es) contracted due to substandard housing. This measure shall encompass new construction and remodeling/home improvement.
- (n) Obligation to Repair. Homeowners have the legal obligation to allow homebuilders the opportunity to repair. All repairs shall be at the homeowner's discretion, be verified by a qualified third party (of the homeowner's choosing). Homeowners will be reimbursed for any costs of inspection. Should the qualified third party feel that there is no adequate remedy for repair, builders/developers must purchase the home and reimburse the homeowner for all costs pertaining to purchase, resolution, legal fees, inspections, etc. This reimbursement will also include the costs of any upgrades, plus increased market value. This measure shall encompass new home construction and/or remodeling/home improvement.
- (o) The Prohibition of Arbitration. The prohibition of any and all binding arbitration and mediation clauses in homeowner purchase contracts and/or warranties. All arbitration and/or alternative dispute resolutions shall be optional. Homeowners will have the right to decide if homeowner(s) would prefer a form of mediation outside of the courts and shall never be, in any binding manner, forced to give up their rights to a trial of their peers regarding home purchase contracts, home defects of any type, and/or home warranties. This measure shall encompass new home construction and/or remodeling/home improvement.
- (p) Preservation of Documents. All builders and/or cities' building departments are mandated by law to maintain, archive, and make available to homeowners, copies of all residential blueprints for a period of ten years from completion or face penalties and fines up to \$5,000 for noncompliance. This measure shall encompass new home construction and/or remodeling/home improvement. Cities that do not enforce this article shall forfeit any sovereign immunity for construction defects and may be held liable for required repairs.
- (q) Proven Materials. That no building materials that are proven to fail and/or that have been subject to class actions shall be used in the process of new home building and/or in home improvement/remodeling.
- (r) Safe and Sound Housing. Holding all builders/developers responsible and liable for any and all building code violations. All builders must abide by and build in accordance with applicable federal, state, and local building laws and regulations. Builders are responsible for the proper application of all building materials, according to manufacturer specifications.
- (s) Building Industry Regulation. The licensing, bonding, proof of liability insurance, and finger printing of all contractors and/or subcontractors. Fingerprinting shall be mandatory for all corporate officers filed under licensee. The appropriate state agency shall set and charge a fee for the fingerprinting of each person covered by this subsection.
- (t) The Right to Inspect. All homebuyers have the legal right to have their homes inspected by an independent inspector of their choice, prior to purchase, regardless of the status of the home--new, older, manufactured, remodeled, and/or from the ground up.

SECTION 6. Alternative Dispute Resolution; A new Section 895 shall be added to the Civil Code. It shall read:

Nothing in this title is intended to affect existing statutory or decisional law pertaining to the applicability, viability, or enforceability of alternative dispute resolution methods, alternative remedies, contractual arbitration, judicial reference, or similar procedures requiring a binding resolution of a claim or any other disputes between claimants and builders. The filing of an Action does not preclude the use of binding or nonbinding arbitration, judicial reference, or any other form of alternative dispute resolution.

SECTION 7. Preservation of Existing Causes of Actions, Standing, Standards of Liability; A new Section 900 shall be added to the Civil Code. It shall read:

Nothing in this title establishes any new causes of action, other than to enforce the provisions of this title. Nothing in this title provides standing for any person or entity not already permitted by existing law. Nothing in this title modifies any standard of liability applicable by law or contract to a builder, general contractor, subcontractor, material supplier, individual product manufacturer or design professional. This initiative may be amended to further its purposes by statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor. There shall be no law passed by initiative or otherwise requiring a prelitigation procedure for construction defects cases unless two-thirds of the electors vote for such a measure or by statute, passed in each house by roll call vote entered in the journal, two-thirds of the membership concurring, and signed by the Governor. Prelitigation procedure means providing written or oral notice prior to filing an action against any party alleged to contributed to a construction defect. The effective date of this measure shall be January 1, 2007.